

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Geraldine McCurry,

Plaintiff,

Case Number 14-12114
Hon. Denise Page Hood

v.

Carolyn W. Colvin,
Acting Commissioner
of Social Security,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION
TO GRANT PETITIONER'S APPLICATION FOR
SECTION 406(b) ATTORNEY FEES (DOC. 25)**

Petitioner, Thomas J. Bertino, counsel for Plaintiff, seeks attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act. Petitioner requests \$8,798.13, which is the full amount of potential attorney fees the Social Security Administration withheld from Geraldine McCurry's benefits award. McCurry, through a stipulation and order, has received \$4,332.79 in attorney fees under 28 U.S.C. § 2412, the Equal Access to the Justice Act ("EAJA"). Therefore, if Petitioner's motion is granted, he must repay McCurry the \$4,332.79 she received under the EAJA. The Commissioner does not oppose the amount Petitioner seeks.

The Magistrate Judge recommends that the Court grant Petitioner's motion, noting that Petitioner demonstrated that the amount he seeks is reasonable. (Doc. 25 at 2). The Magistrate Judge also states that Petitioner's request for attorney fees under 42 U.S.C. §§ 406(a) and 406(b) is not completely restricted by the 25% cap under §406(b)(1)(A). Each tribunal may award attorney fees to an attorney for the work that the attorney has done within that tribunal. Accordingly, the Petitioner may seek additional attorney fees, subject to the restrictions 42 U.S.C. § 406(a)(2)(A), for work done before the Commissioner without regard to the cap. (Doc. 25 at 4).

Once a report and recommendation has been issued, a party has fourteen days to file written objections to the Magistrate Judge's proposed findings and recommendations. 28 U.S.C. § 636. A district court is not required to review any portion of a report and recommendation to which no objection was made.

Hickey-Niezgoda v. Wells Fargo Home Mortgage, No. 11-10538, 2012 WL 1079573, at *1 (E.D. Mich. Mar. 30, 2012) citing *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Neither party filed any written objections, and the time period for filing objections has expired. After reviewing the motion for summary judgment, the Report and Recommendation, and the remainder of the record, the Court agrees

with the Magistrate Judge's recommendations. She engaged in a thorough analysis of the issues presented and provided reasoned explanations for her conclusions.

Accordingly,

IT IS ORDERED that the Magistrate Judge's Report and Recommendation (Doc. No. 25) is ACCEPTED and ADOPTED.

IT IS FURTHER ORDERED that the Petition for Attorney Fees (Doc. No. 20) is GRANTED. Petitioner is awarded \$8,798.13 in attorney's fees. Petitioner must refund Plaintiff \$4,332.79, the amount previously awarded under the EAJA.

SO ORDERED.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: September 29, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 29, 2016, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager